

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

PHE, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 4:12-cv-02296-HEA
)	
Does 1-96,)	Hon. Henry E. Autrey
)	
<i>Defendants.</i>)	<i>JURY TRIAL DEMANDED</i>
)	

**PLAINTIFF'S SECOND MOTION AND MEMORANDUM FOR EXTENSION OF TIME
TO NAME AND SERVE DEFENDANTS PURSUANT TO FED. R. CIV. P. 4(m)**

Plaintiff submits this statement regarding the status of service on Defendants and moves for a second extension of time to name and serve Defendants.

Plaintiff filed its Complaint on December 12, 2012. Docket No. 1. Concurrently with its Complaint, Plaintiff filed a motion for leave to take early discovery, and a memorandum in support regarding the same. Docket Nos. 7 and 8. On April 8, 2013 Plaintiff moved for its first extension of time to name and serve. Docket No. 7. The Court granted this extension on April 9, 2013, Docket No. 9. Additionally, the Court granted Plaintiff's motion for leave on April 29, 2013. Docket No. 10. Pursuant to this Order, Plaintiff served third party subpoenas on the Internet Service Providers (ISPs) utilized by the Doe Defendants. Plaintiff requested a production date of June 7, 2013.

Plaintiff has yet to receive the Doe Defendants' identifying information from ISPs SBC Internet Services d/b/a AT&T Internet Services, Charter Communications Inc., or Comcast Corporation. Both AT&T and Charter have objected to the subpoenas. Plaintiff is hopeful that

Charter's objections can be resolved. Given AT&T's prior conduct, a motion to compel will likely be needed for Plaintiff to receive the AT&T Does' identifying information.

A total of 55 Does utilize these three major ISPs. Multiple motions to quash have been filed in the case, indicating that ISPs have notified subscribers of the subpoenas, even though they have objected to Plaintiff. Docket Nos. 20, 21, 23, and 28. Plaintiff hopes to receive the requested information from Comcast and Charter soon after the notification period expires. Plaintiff will continue to work with AT&T in an attempt to avoid motion practice.

Good cause and reasonable basis exists as to why Plaintiff requires more time beyond the August 8, 2013 deadline to name and serve the Defendants in this case. The Defendants have not been prejudiced by any delay in naming and serving them and will not be prejudiced by an extension. Upon receipt of the Does identifying information Plaintiff will be able to further evaluate its case, and properly effectuate service on the Defendants.

Therefore, the Court should extend the time for service for an appropriate period to allow Plaintiff to obtain identifying information from the ISPs and to properly determine the validity of its claims against the Doe Defendants before naming and serving them.

Out of an abundance of caution, Plaintiff respectfully requests an additional 90 days to name and serve defendants, up to and including November 12, 2013.

Dated: August 14, 2013

Respectfully submitted,
PHE, Inc.,

By its Attorneys,
SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC

By: /s/ Paul A. Lesko

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2013, I electronically filed the foregoing document via the Court's ECF, electronic email system, upon all of record:

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